

STATE OF NEW MEXICO  
BEFORE THE SECRETARY OF THE ENVIRONMENT

IN THE MATTER OF THE APPLICATION  
OF ROPER CONSTRUCTION, INC. FOR  
AN AIR QUALITY PERMIT NO. 9295,  
ALTO CONCRETE BATCH PLANT

AQB 21-57(P)

**RESPONSE IN OPPOSITION TO ROPER CONSTRUCTION INC.'S  
MOTION IN LIMINE TO EXCLUDE EVIDENCE ON WATER ISSUES**

The Property Owners of Sonterra (“Sonterra”) submits this response to the Motion in Limine to Exclude Evidence on Water Issues (“Motion to Exclude”) filed by Roper Construction, Inc. (“Roper” or “applicant”). Because Roper’s own application and the NMED’s proposed permit conditions require the use of water to control emissions, evidence presented by Eluid Martinez regarding water issues is not only relevant, but probative of the applicant’s ability to comply with air quality standards. Accordingly, Roper’s Motion to Exclude must be denied. In support of this response, Sonterra states as follows:

**ARGUMENT**

Roper’s disingenuous claim that evidence regarding the volume of water used and water availability with respect to demonstrating compliance with air quality standards is not relevant is directly contradicted by the application, by the technical testimony of Paul Wade, Roper’s sole technical witness, and by the NMED’s draft proposed permit. There can be no dispute that the only identified emission control method to control emissions at four (4) of the regulated emission sources identified in the application is the addition of moisture content – i.e., water – at these sources. *See* Exhibit 1, Table 2-A of application; Exhibit 2, Table 2-C of application. Put another way, the majority (4) of the seven (7) emission control methods proposed by the applicant rely solely on the application of water at the emission sources. *Id.*

Moreover, Mr. Wade's testimony, although not entirely clear, appears to claim that Roper will also water to the aggregate piles as a method of controlling emissions at the proposed site. *See* Roper's Statement of Intent to Present Technical Evidence, p. 3:8-10. Finally, the NMED's Draft Air Quality Bureau New Source Review Permit ("Draft Permit") actually requires a Wet Dust Suppression System or additional moisture content added to the aggregate/sand piles to control emissions. *See* Exhibit 3, Draft Permit, p. A12 of A16. In fact, the Draft Permit states: "Compliance with allowable emission limits in Table 106.A *shall* be demonstrated by:" the suppression system and addition of moisture.

Under these circumstances, in Mr. Martinez's opinion, the application itself establishes that the use of water is critical to the operation of the facility, as proposed by applicant, to comply with the applicable air quality regulations and standards. *See* Exhibit 4, Affidavit of Eluid Martinez, ¶¶ 1-5. Because the applicant has not identified either the amount or source of the water that will be required to address the moisture requirements to control emissions set forth above, consideration at the hearing of other evidence related to water rights, well permits, water sources and water consumption is relevant evidence in order to determine if the applicant can comply with the moisture requirements set forth above. *Id.* ¶¶ 6-7. Where, as here, the applicant proposes to use water as the sole method to control emissions at Units 3, 4, 5, 6, and 11, the water issues summarized in The Property Owners of Sonterra's Notice of Intent to Present Technical Evidence Pursuant to 20.1.4.7 NMAC are relevant evidence to determine if, in fact, the applicant can actually control emissions at these units in the manner proposed by the application and required by the NMED. *Id.* ¶¶ 8-9.

Ms. Saikrishnan, the NMED's technical witness, claims that the Air Quality Bureau "does not have the ability to deny any application made for an air quality permit on the basis of non-air

quality aspects.” See Air Quality Bureau’s Statement of Intent to Present Technical Testimony, NMED, (Exhibit 1), p. 15:19-21. Rebecca Roose, Deputy Cabinet Secretary of Administration for the NMED claims that the Secretary of the NMED “does not have the authority under applicable statute and rules to make a decision on the air permit based on water issues.” See 2/1/2022 e-mail from R. Roose to Liz Stefanics, attached as Exhibit 5; *see also* Exhibit 4, ¶¶ 9-10.

The NMED’s position in this regard is inconsistent with the NMED’s own requirements imposed on the applicant to achieve compliance with the applicable air quality standards. *See* Exhibit 3, Draft Permit, p. A12 of A16, requiring a Wet Dust Suppression System installed for Units 3, 4, 5, and 6 or additional moisture added to the aggregate/sand storage piles (Unit 11) to meet the emissions limitations contained in the permit. Requiring water suppression systems and/or the addition of additional moisture to control emissions demonstrates that the NMED has the authority to address water issues in the permit process. Based on the above, it appears that the NMED is being improperly selective as to what water issues are to be or not to be addressed in the consideration of approval or denial of this permit. *See* Exhibit 4, ¶ 13.

Water is not only relevant to the NMED’s consideration of the application, water is an essential element of the applicant’s ability to meet air quality standards. The NMED has sanctioned Roper’s proposed use of water to meet air quality standards – indeed, the NMED has required Roper to use water to meet air quality standards. The NMED’s position in this regard makes evidence regarding water issues relevant. If the source, availability and amount of water is theoretical, then compliance with air quality standards is equally theoretical. Roper can only comply with applicable air quality regulations, and comply with the NMED’s proposed permit conditions, if water is available in sufficient quantities to achieve emission control at the units identified in the application and the NMED draft permit. Where water is the sole method of

attaining compliance with air quality standards, water is an “air quality aspect.” Further, if the Secretary cannot make a decision on the air permit based on water issues, then how can water be considered as the sole emission control at 4-5 units at the facility?

Demonstrating adequate water supply is in fact the only way Roper can demonstrate compliance with applicable air quality regulations at these units. The applicant and the NMED cannot credibly propose and require water use as the sole emission control method to achieve compliance with air quality standards on the one hand, then incredibly assert that water issues are not relevant on the other. Evidence on the water issues identified in the Motion to Exclude is evidence that will make Roper’s so-called compliance with air quality standards less probable. Accordingly, this evidence is relevant. *See* Rule 11-401 NMRA (relevant evidence is evidence having “any tendency to make a fact more or less probable than it would be without the evidence).

With respect to Mr. Martinez’s testimony regarding Roper’s apparent attempt to utilize a livestock watering well for operating the proposed facility, after Mr. Martinez’s testimony Roper’s permit for the livestock watering well, the applicant inexplicably requested that the Office of the State Engineer withdraw the permit. *See* Exhibit 6, letter from Office of State Engineer. On January 24, 2022, at the applicant’s request, Permit H-04700 was withdrawn and cancelled by the Office of the State Engineer. *Id.* However, the applicant is not precluded from filing a new application in the future for a permit to appropriate groundwater at this location. *See* Exhibit 4, ¶¶ 14-16. Accordingly, evidence regarding well sources is still relevant to this proceeding. *Id.*

#### CONCLUSION

For these reasons, Sonterra respectfully requests that Roper’s Motion to Exclude be denied so that Mr. Martinez can present testimony relevant to, and probative of, Roper’s claimed ability to achieve compliance with air quality standards.

Respectfully submitted,

HINKLE SHANOR LLP

/s/ Thomas M. Hnasko

Thomas M. Hnasko

Julie A. Sakura

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[jsakura@hinklelawfirm.com](mailto:jsakura@hinklelawfirm.com)

*Attorneys for Ranches of Sonterra  
Property Owners Association and  
Don R. and Kathleen Weems*

### **CERTIFICATE OF SERVICE**

I hereby certify that on February 2<sup>nd</sup>, 2022, I caused a true and correct copy of the foregoing pleading to be electronically served on the following:

Louis W. Rose

Kristen Burby

[lrose@montand.com](mailto:lrose@montand.com)

[kburby@montand.com](mailto:kburby@montand.com)

*Counsel for Roper Construction, Inc.*

Christopher J. Vigil

[christopherj.vigil@state.nm.us](mailto:christopherj.vigil@state.nm.us)

*Attorney for New Mexico Environment  
Department Air Quality Bureau*

/s/ Thomas M. Hnasko

Thomas M. Hnasko

**Table 2-A: Regulated Emission Sources**

Unit and stack numbering must correspond throughout the application package. If applying for a NOI under 20.2.73 NMAC, equipment exemptions under 2.72.202 NMAC do not apply.

Unit Number <sup>1</sup>	Source Description	Make	Model #	Serial #	Manufacturer's Rated Capacity <sup>3</sup> (Specify Units)	Requested Permitted Capacity <sup>3</sup> (Specify Units)	Date of Manufacture <sup>2</sup>	Controlled by Unit #	Source Classification Code (SCC)	For Each Piece of Equipment, Check One	RICE Ignition Type (CI, SI, 4SLB, 4SRB, 2SLB) <sup>4</sup>	Replacing Unit No.
							Date of Construction/Reconstruction <sup>2</sup>	Emissions vented to Stack #				
1	Haul Road	N/A	N/A	N/A	N/A	20.3 truck/hr	NA	NA	3-05-011-99	<input type="checkbox"/> Existing (unchanged) <input checked="" type="checkbox"/> New/Additional <input type="checkbox"/> To Be Modified	<input type="checkbox"/> To be Removed <input type="checkbox"/> Replacement Unit <input type="checkbox"/> To be Replaced	
2	Feeder Hopper	JEL Manufacturing	TBD	TBD	300 cu.ft	187.5 tph	TBD	NA	3-05-011-15	<input type="checkbox"/> Existing (unchanged) <input checked="" type="checkbox"/> New/Additional <input type="checkbox"/> To Be Modified	<input type="checkbox"/> To be Removed <input type="checkbox"/> Replacement Unit <input type="checkbox"/> To be Replaced	
3	Feeder Hopper Conveyor	JEL Manufacturing	TBD	TBD	340 tph	187.5 tph	TBD	3b	3-05-011-14	<input type="checkbox"/> Existing (unchanged) <input checked="" type="checkbox"/> New/Additional <input type="checkbox"/> To Be Modified	<input type="checkbox"/> To be Removed <input type="checkbox"/> Replacement Unit <input type="checkbox"/> To be Replaced	
4	Overhead Aggregate Bins (4)	JEL Manufacturing	TBD	TBD	120 tons	187.5 tph	TBD	4b	3-05-011-06	<input type="checkbox"/> Existing (unchanged) <input checked="" type="checkbox"/> New/Additional <input type="checkbox"/> To Be Modified	<input type="checkbox"/> To be Removed <input type="checkbox"/> Replacement Unit <input type="checkbox"/> To be Replaced	
5	Aggregate Weigh Batcher	JEL Manufacturing	TBD	TBD	12 yds	187.5 tph	TBD	5b	3-05-011-08	<input type="checkbox"/> Existing (unchanged) <input checked="" type="checkbox"/> New/Additional <input type="checkbox"/> To Be Modified	<input type="checkbox"/> To be Removed <input type="checkbox"/> Replacement Unit <input type="checkbox"/> To be Replaced	
6	Aggregate Weigh Conveyor	JEL Manufacturing	TBD	TBD	550 tph	187.5 tph	TBD	6b	3-05-011-08	<input type="checkbox"/> Existing (unchanged) <input checked="" type="checkbox"/> New/Additional <input type="checkbox"/> To Be Modified	<input type="checkbox"/> To be Removed <input type="checkbox"/> Replacement Unit <input type="checkbox"/> To be Replaced	
7	Truck Loading with Baghouse	JEL Manufacturing	TBD	TBD	12 yds/batch	125 cuyd/hr	TBD	7b	3-05-011-10	<input type="checkbox"/> Existing (unchanged) <input checked="" type="checkbox"/> New/Additional <input type="checkbox"/> To Be Modified	<input type="checkbox"/> To be Removed <input type="checkbox"/> Replacement Unit <input type="checkbox"/> To be Replaced	
8	Cement/Fly Ash Weigh Batcher	JEL Manufacturing	TBD	TBD	12 yds/batch	38.8 tph	TBD	7b	3-05-011-99	<input type="checkbox"/> Existing (unchanged) <input checked="" type="checkbox"/> New/Additional <input type="checkbox"/> To Be Modified	<input type="checkbox"/> To be Removed <input type="checkbox"/> Replacement Unit <input type="checkbox"/> To be Replaced	
9	Cement Split Silo	JEL Manufacturing	TBD	TBD	1,000 BBL	30.6 tph	TBD	9b	3-05-011-07	<input type="checkbox"/> Existing (unchanged) <input checked="" type="checkbox"/> New/Additional <input type="checkbox"/> To Be Modified	<input type="checkbox"/> To be Removed <input type="checkbox"/> Replacement Unit <input type="checkbox"/> To be Replaced	
10	Fly Ash Split Silo	JEL Manufacturing	TBD	TBD		8.25 tph	TBD	10b	3-05-011-17	<input type="checkbox"/> Existing (unchanged) <input checked="" type="checkbox"/> New/Additional <input type="checkbox"/> To Be Modified	<input type="checkbox"/> To be Removed <input type="checkbox"/> Replacement Unit <input type="checkbox"/> To be Replaced	
11	Aggregate/Sand Storage Piles	N/A	N/A	N/A	1 Acre	187.5 tph	TBD	NA	3-05-011-99	<input type="checkbox"/> Existing (unchanged) <input checked="" type="checkbox"/> New/Additional <input type="checkbox"/> To Be Modified	<input type="checkbox"/> To be Removed <input type="checkbox"/> Replacement Unit <input type="checkbox"/> To be Replaced	
12, 13, 14	Concrete Batch Plant Heaters (3 total)	Navien	TBD	TBD	199,999 Btu/hr (each) x3	0.6 mmBtu/hr total	TBD	NA	1-01-006-02	<input type="checkbox"/> Existing (unchanged) <input checked="" type="checkbox"/> New/Additional <input type="checkbox"/> To Be Modified	<input type="checkbox"/> To be Removed <input type="checkbox"/> Replacement Unit <input type="checkbox"/> To be Replaced	

<sup>1</sup> Unit numbers must correspond to unit numbers in the previous permit unless a complete cross reference table of all units in both permits is provided.

<sup>2</sup> Specify dates required to determine regulatory applicability.

<sup>3</sup> To properly account for power conversion efficiencies, generator set rated capacity shall be reported as the rated capacity of the engine in horsepower, not the kilowatt capacity of the generator set.

<sup>4</sup> "4SLB" means four stroke lean burn engine, "4SRB" means four stroke rich burn engine, "2SLB" means two stroke lean burn engine, "CI" means compression ignition, and "SI" means spark ignition

# EXHIBIT 1

Unit and stack numbering must correspond throughout the application package. Only list control equipment for TAPs if the TAP's maximum uncontrolled emissions rate is over its respective threshold as listed in 20.2.72 NMAC, Subpart V, Tables A and B. In accordance with 20.2.72.203.A(3) and (8) NMAC, 20.2.70.300.D(5)(b) and (e) NMAC, and 20.2.73.200.B(7) NMAC, the permittee shall report all control devices and list each pollutant controlled by the control device regardless if the applicant takes credit for the reduction in emissions.

[illegible]

<sup>1</sup> List each control device on a separate line. For each control device, list all emission units controlled by the control device.



MICHELLE LUJAN GRISHAM  
GOVERNOR

JAMES C. KENNEY  
CABINET SECRETARY

**AIR QUALITY BUREAU  
NEW SOURCE REVIEW PERMIT  
Issued under 20.2.72 NMAC**

Sent by Certified Mail  
Return Receipt Requested

**NSR Permit No:** 9295  
**Facility Name:** Alto Concrete Batch Plant

**Facility Owner/Operator:** Roper Construction, Inc.

**Mailing Address:** P.O. Box 969  
Alto, New Mexico 88312

**TEMPO/IDEA ID No:** 40076-PRN20210001  
**AIRS No:** 35-027-0299

**Permitting Action:** Regular New  
**Source Classification:** Synthetic Minor

**Facility Location:** 438,240 m E by 3,697,950 m N, Zone 13;  
Datum NAD83

**County:** Lincoln County

**Air Quality Bureau Contact** Deepika Saikrishnan  
**Main AQB Phone No.** (505) 476-4300

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**Liz Bisbey-Kuehn**  
**Bureau Chief**  
**Air Quality Bureau**

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**Date**

**EXHIBIT 3**

Template version: 06/30/2021

SCIENCE | INNOVATION | COLLABORATION | COMPLIANCE



**A501 Equipment Substitutions**

- A. Substitution of aggregate handling equipment is authorized provided the replacement equipment is functionally equivalent and has the same or lower process capacity as the piece of equipment it is replacing in the most recent permit. The replacement equipment shall comply with the opacity requirements in this permit.
- B. The Department shall be notified within fifteen (15) days of equipment substitutions using the Equipment Substitution Form provided by the Department and available online.

**A502 Process Equipment – Conveyors, Bins, Weigh Batchers and Storage Piles (Units 3, 4, 5, 6 and 11)**

- A. Wet Dust Suppression System (Units 3, 4, 5, 6 and 11)

**Requirement:** Compliance with allowable particulate emission limits in Table 106.A shall be demonstrated by:

- 1) Feeder Hopper Conveyor (Unit 3), Overhead Aggregate Bins (Unit 4), Aggregate Weigh Batchers (Unit 5), Aggregate Weigh Conveyor (Unit 6) shall have a Wet Dust Suppression System installed or additional moisture added at the aggregate/sand storage piles (Unit 11) to minimize fugitive emissions to the atmosphere from emission points and to meet the emission limitations contained in this permit.
- 2) At any time, if visible emissions at material transfer points are observed, additional water sprays shall be added or if already installed, turned on, or additional moisture will be added to the aggregate/sand storage piles (Unit 11) to minimize the visible emissions.
- 3) Each Wet Dust Suppression System shall be turned on and properly function at all times the facility is operating or additional moisture shall be added at the aggregate/sand storage piles (Unit 11), unless rain or snow precipitation achieves an equivalent level of dust control. Any problems with the control devices shall be corrected before commencement of operation.

**Monitoring:**

- 1) On each day of operation at the commencement of operation of the Wet Dust Suppression System, the permittee shall inspect the Wet Dust Suppression System. At a minimum, the visual inspection shall include checks for malfunctions and deficiencies in dust control effectiveness, such as breaches in the physical barriers controlling dust emissions; spray nozzle clogs; misdirected sprays; insufficient water pressure; and/or any other dust control equipment deficiencies or malfunctions, or
- 2) On each day of operation when additional moisture is added to the aggregate/sand storage piles, daily visible inspections will be made to determine the additional moisture is adequate to minimize visible emissions.

**Recordkeeping:**

- 1) A daily record shall be made of the Wet Dust Suppression System inspection and any maintenance activity that resulted from the inspection. The permittee shall record in

STATE OF NEW MEXICO  
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ALTO CONCRETE BATCH PLANT

AQB 21-57(P)

STATE OF NEW MEXICO    )  
                                  ) ss.  
COUNTY OF SANTA FE    )

**AFFIDAVIT OF ELUID L. MARTINEZ**

Eluid L. Martinez, being first duly sworn, deposes and states as follows:

1. I am over the age of 18 and am competent to make this Affidavit. The matters set forth are true based on my personal knowledge. I am submitting this Affidavit in opposition to the Motion in Limine to Exclude Evidence on Water Issues submitted by Roper Construction, Inc. ("Motion to Exclude").
2. The Motion to Exclude claims that my testimony regarding water rights, water sources, water consumption and well permit applications is not relevant to the hearing on the application.
3. In this matter, the applicant proposes to control emissions at units 3b, 4b, 5b and 6b with the addition of moisture content – i.e., water. *See* Table 2-C of the Application.
4. Additionally, the applicant proposes to add additional moisture content to the aggregate piles to further control emissions. *See* Direct Testimony of Paul Wade, p. 3:8-10.

**EXHIBIT 4**

5. In my opinion, the application itself establishes that the use of water is critical to the operation of the facility, as proposed by applicant, to comply with the applicable air quality regulations and standards.
6. The applicant has not identified either the amount or source of the water that will be required to address the moisture requirements to control emissions set forth above.
7. Accordingly, consideration at the hearing of other evidence related to water rights, well permits, water sources and water consumption is relevant evidence in order to determine if the applicant can comply with the moisture requirements set forth above.
8. Where, as here, the applicant proposes to use water as the sole method to control emissions at Units 3, 4, 5, 6, and 11, the water issues summarized in The Property Owners of Sonterra's Notice of Intent to Present Technical Evidence Pursuant to 20.1.4.7 NMAC are relevant evidence to determine if, in fact, the applicant can actually control emissions at these units in the manner proposed by the application.
9. I am also aware that the New Mexico Environment Department ("NMED") concurs in the Motion to Exclude. I am also aware that the NMED's technical witness claims that the Air Quality Bureau "does not have the ability to deny any application made for an air quality permit on the basis of non-air quality aspects." *See* Air Quality Bureau's Statement of Intent to Present Technical Testimony, NMED, Exhibit 1, p. 15:19-21.
10. I have also reviewed an e-mail authored by Rebecca Roose, Deputy Cabinet Secretary of Administration for the NMED, which claims that the Secretary of the

NMED “does not have the authority under applicable statute and rules to make a decision on the air permit based on water issues.”

11. The NMED’s position in this regard is inconsistent with the NMED’s own requirements imposed on the applicant to achieve compliance with the applicable air quality standards. *See* Draft Air Quality Bureau New Source Review Permit, p. A12 of A16, requiring a Wet Dust Suppression System installed for Units 3, 4, 5, and 6 or additional moisture added to the aggregate/sand storage piles (Unit 11) to meet the emissions limitations contained in the permit. *See* Draft Permit, Administrative Record, NMED Index No. 9, 0338-0395.
12. Requiring water suppression systems and/or the addition of additional moisture to control emissions demonstrates that the NMED has the authority to address water issues in the permit process.
13. Based on the above, it appears that the NMED is being improperly selective as to what water issues are to be or not to be addressed in the consideration of approval or denial of this permit.
14. I am further aware that after my testimony regarding the applicant’s May 7, 2021 receipt of a permit from the Office of the State Engineer to drill a livestock watering well at the location of the facility was filed, the applicant inexplicably requested that the Office of the State Engineer withdraw the permit.
15. On January 24, 2022, at the applicant’s request, Permit H-04700 was withdrawn and cancelled by the Office of the State Engineer.

16. However, the applicant is not precluded from filing a new application in the future for a permit to appropriate groundwater at this location. Accordingly, evidence regarding well sources is still relevant to this proceeding.

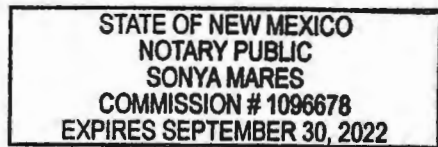
FURTHER AFFIANT SAYETH NAUGHT.

  
\_\_\_\_\_  
ELUID L. MARTINEZ

SUBSCRIBED, SWORN TO AND ACKNOWLEDGED before me on this 2nd day of February 2022, by Eluid L. Martinez.

  
\_\_\_\_\_  
Notary Public

My Commission Expires:



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----- Forwarded message -----

From: **Liz Stefanics** <[lstefanics@msn.com](mailto:lstefanics@msn.com)>

Date: Tue, Feb 1, 2022, 19:55

Subject: Fw: [EXTERNAL] Fw: NMED Hearing on proposed Alto Concrete Batch Plant

To: Barbara Yount <[barbarayount@sbcglobal.net](mailto:barbarayount@sbcglobal.net)>, [chairaltocep@gmail.com](mailto:chairaltocep@gmail.com)  
<[chairaltocep@gmail.com](mailto:chairaltocep@gmail.com)>

See email below. The NMED is only addressing the air quality application.

Thanks,

Liz Stefanics, Senate District 39

PO Box 720, Cerrillos 87010

Cell 505-699-4808

[lstefanics@msn.com](mailto:lstefanics@msn.com)

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**From:** Roose, Rebecca, NMENV <[Rebecca.Roose@state.nm.us](mailto:Rebecca.Roose@state.nm.us)>

**Sent:** Tuesday, February 1, 2022 5:11 PM

**To:** Liz Stefanics <[lstefanics@msn.com](mailto:lstefanics@msn.com)>

**Subject:** RE: [EXTERNAL] Fw: NMED Hearing on proposed Alto Concrete Batch Plant

Hello Chair Stefanics,

**EXHIBIT 5**

I'm now caught up on the status of this matter. NMED concurred with the company's motion to exclude evidence and testimony on water issues because those issues are entirely outside the scope of the hearing on the air quality permit. Water issues, such as water rights, sources and consumption, are not relevant to the proceeding and have no bearing on the final decision. The Secretary will be the final decision-maker on the permit and he does not have the authority under applicable statute and rules to make a decision on the air permit based on water issues.

Please let me know if you have any additional concerns or questions.

Rebecca Roose  
Deputy Cabinet Secretary of Administration  
New Mexico Environment Department  
Mobile: (505) 670-6852  
Pronouns: she/her (*Why is this important?*)  
Science, Innovation, Collaboration, Compliance - #IamNMED

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**From:** Liz Stefanics <[lstefanics@msn.com](mailto:lstefanics@msn.com)>  
**Sent:** Tuesday, February 1, 2022 2:23 PM  
**To:** Roose, Rebecca, NMENV <[Rebecca.Roose@state.nm.us](mailto:Rebecca.Roose@state.nm.us)>  
**Subject:** [EXTERNAL] Fw: NMED Hearing on proposed Alto Concrete Batch Plant

CAUTION: This email originated outside of our organization. Exercise caution prior to clicking on links or opening attachments.

What is this about? Limiting testimony on water?

Thanks,

Liz Stefanics, Senate District 39  
PO Box 720, Cerrillos 87010  
Cell 505-699-4808  
[lstefanics@msn.com](mailto:lstefanics@msn.com)

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**From:** Barbara Yount <[barbarayount@sbcglobal.net](mailto:barbarayount@sbcglobal.net)>  
**Sent:** Tuesday, February 1, 2022 12:24 PM  
**To:** Liz Stefanics <[lstefanics@msn.com](mailto:lstefanics@msn.com)>  
**Cc:** Mark Severance <[chairaltocep@gmail.com](mailto:chairaltocep@gmail.com)>  
**Subject:** NMED Hearing on proposed Alto Concrete Batch Plant

Liz,

I know you are busy working for us in District 39. Thank you for your support of us seeking to keep a concrete batch plant out of residences in Alto.

Since one of your main issues is WATER and in your position as Chair of the Water and Natural Resources Committee, I thought you would like to know that the NMED is in favor of prohibiting the “opposition” from mentioning the 900 lb gorilla in the room at our upcoming hearing on Feb 9th-11th.

<https://www.env.nm.gov/opf/wp-content/uploads/sites/13/2022/01/2022-01-25-AQB-21-57P-Ropers-Motion-in-Limine-Water-Issues.pdf>

Thank you for your continued support.

Barbara Yount Cathey  
214.499.5081



John T. Romero (Acting)  
State Engineer



Roswell Office  
1900 WEST SECOND STREET  
ROSWELL, NM 88201

**STATE OF NEW MEXICO  
OFFICE OF THE STATE ENGINEER**

Trn Nbr: 694824  
File Nbr: H 04700

Jan. 24, 2022

RYAN ROPER  
ROPER INVESTMENTS LLC  
PO BOX 969  
ALTO, NM 88312

Greetings:

Enclosed is your copy of the above numbered permit which has been withdrawn in accordance with your request and is not subject to reinstatement.

Sincerely,

A handwritten signature in blue ink, appearing to read "Azucena Ramirez".

Azucena Ramirez  
(575) 622-6521

Enclosure

withdraw

**EXHIBIT 6**

File

H-4700

## NEW MEXICO OFFICE OF THE STATE ENGINEER

APPLICATION FOR PERMIT TO USE UNDERGROUND WATERS IN ACCORDANCE  
WITH SECTIONS 72-12-1.1, 72-12-1.2, OR 72-12-1.3 NEW MEXICO STATUTESFor fees, see State Engineer website: <http://www.ose.state.nm.us/>

## 1. APPLICANT(S)

Name: RYAN ROPER, ROPER INVESTMENTS LLC	Name:
Contact or Agent: <input type="checkbox"/> check here if Agent	Contact or Agent: <input type="checkbox"/> check here if Agent
Mailing Address: PO BOX 969	Mailing Address:
City: ALTO	City:
State: NM	State:
Zip Code: 88312	Zip Code:
Phone: 575-973-0440 <input type="checkbox"/> Home <input checked="" type="checkbox"/> Cell	Phone: <input type="checkbox"/> Home <input type="checkbox"/> Cell
Phone (Work): 575-973-0440	Phone (Work):
E-mail (optional): RYAN@ROPER-NM.COM	E-mail (optional):

☐ Check here if existing well. Enter OSE File No. \_\_\_\_\_

## 2. WELL LOCATION Required: Coordinate location must be New Mexico State Plane (NAD 83), UTM (NAD 83), or Lat/Long (WGS84). District II (Roswell) and District VII (Cimarron) customers, provide a PLSS location in addition to above.

NM State Plane (NAD83) - In feet	NM West Zone <input type="checkbox"/> NM Central Zone <input type="checkbox"/> NM East Zone <input type="checkbox"/>	X (in feet): Y (in feet):	OSE DT MARCH 2021 MCH/BS		
UTM (NAD83) - In meters	UTM Zone 13N <input type="checkbox"/> UTM Zone 12N <input type="checkbox"/>	Easting (in meters): Northing (in meters):			
Lat/Long (WGS84) - To 1/10 <sup>th</sup> of second	Lat: 33 deg 25 min 8.93 sec	Long: 105 deg 39 min 52.67 sec			
<input checked="" type="checkbox"/> Check if seconds are decimal format					
Other Location Information (complete the below, if applicable):					
PLSS Quarters or Halves: NE, NW, NE 2, 1, 2		Section: 27	Township: 10S	Range: 13E	
County: LINCOLN					
Land Grant Name (if applicable):					
Lot No:	Block No:	Unit/Tract:	Subdivision:		
Hydrographic Survey:		Map:	Tract:		
Other description relating well to common landmarks, streets, or other:					
Well is on Land Owned by (Required): ROPER INVESTMENTS LLC					

## FOR OSE INTERNAL USE

File No.: H-4700-P001	Tm. No.: 694824	Application for Permit, Form wr-01, Rev 6/30/17
Well Tag ID No. (if applicable): 20E74	Sub-Basin: HRR	Receipt No.: 2-13330
		Log Due Date: 05-07-2022

### 3. PURPOSE OF USE

- ☐ Domestic use for one household  
☒ Livestock watering  
☐ Domestic use for more than one household. Number of households \_\_\_\_ Note: List each lot and owner contact information.  
☐ Drinking and sanitary uses that are incidental to the operations of a governmental, commercial, or non-profit facility  
☐ Prospecting, mining or drilling operations to discover or develop natural resources  
☐ Construction of public works, highways and roads  
☐ Domestic use for one household and livestock watering  
☐ Domestic use for multiple households and livestock watering  
☐ Domestic well to accompany a house or other dwelling unit constructed for sale  
☐ New well (with new purpose)  
☐ Amend purpose of use on existing well  
☐ No change in purpose

CANCELLED

### 4. WELL INFORMATION: CHECK THOSE THAT APPLY ☐ Existing Well ☐ Known Artesian

File Information: (If existing well, provide OSE no. & indicate below if well is to be replacement, repaired or deepened, or supplemental. If new well, leave blank, as OSE must assign no.)

OSE Well No. (If Existing)	New Well No. (provided by OSE)	
Well Driller Name: KD HUEY CO., LLC	Well Driller License Number: WD68	
Approximate Depth of Well (feet): 400	Outside Diameter of Well Casing (inches): 5.5	
<input type="checkbox"/> Replacement well (List all existing wells if more than one):	<input type="checkbox"/> Repair or Deepen: <input type="checkbox"/> Clean out well to original depth <input type="checkbox"/> Deepen well from ____ to ____ ft. <input type="checkbox"/> Other (Explain):	<input type="checkbox"/> Supplemental well (List OSE No. for all wells this will supplement):

### 5. ADDITIONAL STATEMENTS OR EXPLANATIONS (Use additional sheets if necessary)

OSE DT MAY 6 2021 PM 1:55

### ACKNOWLEDGEMENT

I, We (name of applicant(s)), RYAN ROPER, ROPER INVESTMENTS LLC  
Print Name(s)

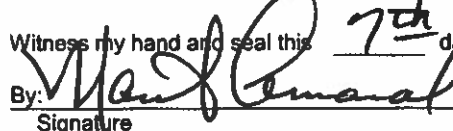
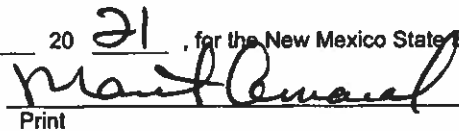
affirm that the foregoing statements are true to the best of (my, our) knowledge and belief.

  
Applicant Signature

\_\_\_\_\_  
Applicant Signature

### ACTION OF THE OFFICE OF THE STATE ENGINEER (FOR OSE USE ONLY)

This application is approved subject to the attached general and specific conditions of approval.

Witness my hand and seal this 7<sup>th</sup> day of May, 20 21, for the New Mexico State Engineer,  
By:  Signature  Print

### FOR OSE INTERNAL USE

Well Tag ID Issued? ☒ Yes ☐ No

Application for Permit, Form wr-01, Rev 6/30/17

File No.: 41-4700-P001 Trn No.: 694824 Well ID Tag No.: 20E74

**NEW MEXICO STATE ENGINEER OFFICE  
APPLICATION FOR PERMIT TO USE UNDERGROUND WATERS  
IN ACCORDANCE WITH SECTION 72-12-1 NEW MEXICO STATUTES**

CANCELLED

**GENERAL CONDITIONS OF APPROVAL (A thru R)**

- 17-A     The maximum combined diversion of all wells that may be appropriated under this permit is 3.000 acre-feet in any year (One acre-foot equals 325,851 gallons).
  
- 17-B     The well shall be drilled by a driller licensed in the State of New Mexico in accordance with 72-12-12 NMSA 1978. A licensed driller shall not be required for the construction of a well driven without the use of a drill rig; provided that the casing shall not exceed two and three-eighths (2 3/8) inches outside diameter.
  
- 17-C     The well driller must file the well record with the State Engineer and the applicant within 30 days after the well is drilled or driven. It is the well owner's responsibility to ensure that the well driller files the well record. The well driller may obtain the well record form from any District Office or the Office of the State Engineer website.
  
- 17-D     The production casing shall not exceed 7 inches outside diameter except under specific conditions in which reasons satisfactory to the State Engineer are shown.
  
- 17-E     To request a change to the purpose of use of water authorized under this permit, the permittee shall file an application with the State Engineer.
  
- 17-F     An application for a new 72-12-1.1 NMSA 2003 domestic well permit where the proposed point of diversion is to be located on the same legal lot of record as an operational 72-12-1.1 NMSA domestic well shall be treated as an application for a supplemental well and the combined diversion may not exceed the maximum annual diversion permitted.
  
- 17-G     If artesian water is encountered, the well driller shall comply with all rules and regulations pertaining to the drilling and casing of artesian wells.
  
- 17-H     The drilling of the well and amount and uses of water permitted are subject to such limitations as may be imposed by a court or by lawful municipal or county ordinance which are more restrictive than the conditions of this permit and applicable State Engineer regulations.

Trn Desc: H 04700 POD1  
Log Due Date: 05/07/2022  
Form: wr-01

File Number: H 04700  
Trn Number: 694824

NEW MEXICO STATE ENGINEER OFFICE  
APPLICATION FOR PERMIT TO USE UNDERGROUND WATERS  
IN ACCORDANCE WITH SECTION 72-12-1 NEW MEXICO STATUTES

CANCELLED

**GENERAL CONDITIONS OF APPROVAL (Continued)**

- 17-I      The permittee shall utilize the highest and best technology available to ensure conservation of water to the maximum extent practical.
  
- 17-J      The well shall be set back a minimum of 50 ft. from an existing well of other ownership unless a variance has been granted by the State Engineer. The State Engineer may grant a variance for a replacement well or to allow for maximum spacing of the well from a source of groundwater contamination. The well shall be set back from potential sources of contamination in accordance with federal, state, and local requirements.
  
- 17-K      Pursuant to section 72-8-1 NMSA 1978, the permittee shall allow the State Engineer and OSE representatives entry upon private property for the performance of their respective duties, including access to the ditch or acequia to measure flow and also to the well for meter reading and water level measurement.
  
- 17-L      The permit is subject to cancellation for non-compliance with the conditions of approval or if otherwise not exercised in accordance with the terms of the permit.
  
- 17-M      The right to divert water under this permit is subject to curtailment by priority administration as implemented by the State Engineer or a court.
  
- 17-N      In the event of any change of ownership to this permit the new owner shall file a change of ownership form with the State Engineer in accordance with Section 72-1-2.1 NMSA 1978.
  
- 17-O      This well permit shall automatically expire unless the well is completed and the well record is filed with the State Engineer within one year of the date of issuance of the permit.
  
- 17-P      The well shall be constructed, maintained, and operated to prevent inter-aquifer exchange of water and to prevent loss of hydraulic head between hydrogeologic zones.
  
- 17-Q      The State Engineer retains jurisdiction over this permit.

Trn Desc: H 04700 POD1  
Log Due Date: 05/07/2022  
Form: wr-01

File Number: H 04700  
Trn Number: 694824

NEW MEXICO STATE ENGINEER OFFICE  
APPLICATION FOR PERMIT TO USE UNDERGROUND WATERS  
IN ACCORDANCE WITH SECTION 72-12-1 NEW MEXICO STATUTES

CANCELLED

GENERAL CONDITIONS OF APPROVAL (Continued)

- 17-R The State Engineer shall supply a well identification tag for the well driller to firmly affix to the well casing or cap with a steel band upon completion in accordance with Subsection M of 19.27.4.29 NMAC.  
The permit holder is responsible for maintaining the well identification tag.

Well Tag(s) associated with this permit:  
20E74

SPECIFIC CONDITIONS OF APPROVAL

- 17-10 Total diversion from all wells under this permit number shall not exceed 3.000 acre-feet per annum.
- 17-14 This permit authorizes the diversion of water for watering livestock. The total diversion of water under this permit shall not exceed 3.000 acre-feet per year.
- LOG This permit will automatically expire unless the well H 04700 POD1 is completed and the well record filed on or before 05/07/2022.

ACTION OF STATE ENGINEER

This application is approved for the use indicated, subject to all general conditions and to specific conditions listed above.

Witness my hand and seal this 07 day of May A.D., 2021

John R. D Antonio, Jr., P.E., State Engineer

By:

MARET AMARAL



Trn Desc: H 04700 POD1  
Log Due Date: 05/07/2022  
Form: wr-01

File Number: H 04700  
Trn Number: 694824

John R. D Antonio, Jr., P.E.  
State Engineer



Roswell Office  
1900 WEST SECOND STREET  
ROSWELL, NM 88201

**STATE OF NEW MEXICO  
OFFICE OF THE STATE ENGINEER**

Trn Nbr: 694824  
File Nbr: H 04700

May. 07, 2021

RYAN ROPER ROPER INVESTMENTS, LLC  
PO BOX 969  
ALTO, NM 88312

CANCELLED

Greetings:

Enclosed is your copy of the above numbered permit that has been approved in accordance with NM Statute Section 72-12-1 subject to the conditions set forth on the approval page.

Carefully review the attached conditions of approval for these specific permit requirements:

- \* The applicant is responsible for providing the contracted driller with the permit Conditions of Approval and the enclosed well identification tag (if applicable), which must be firmly affixed to the well casing or cap.
- \* If metering is required, a meter report form must be properly completed and submitted to this office upon installation.
- \* The well record and log must be submitted within 30 days of the completion of the well or if the attempt was a dry hole. When conditions require a replaced well be plugged, a plugging record must be properly completed and submitted to this office within 30 days of plugging.
- \* This permit expires and will be cancelled if no well is drilled and/or a well log is not received by the date set forth in the conditions of approval.

Appropriate forms can be downloaded from the OSE website [www.ose.state.nm.us](http://www.ose.state.nm.us) or will be mailed upon request.

Sincerely,

A handwritten signature in black ink, appearing to read "Maret Amaral", is written over a horizontal line.

Maret Amaral  
(575) 622-6521

Enclosure

wr\_01app